IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 9063 OF 2004

AMBIKA YADAV ... PETITIONER

Versus

DHARAMJI TUKARAM MALGAONKAR .. RESPONDENT

Mr. R. D. Misra for petitioner

Mr. Rajendra R. Mishra for R

CORAM:-SMT. RANJANA DESAI, J.

DATED:-28-2-2005

P.C.

This is a tenant's petition. The suit was decreed on the ground of bonafide requirement. Appeal carried from the said judgment and decree was dismissed and hence this writ petition.

2. I have heard the learned counsel appearing for the petitioner. He submitted that Survey No. 80 on which the suit premises are situated are declared as slum area as per the provisions of Maharashtra Slum Areas

(Improvement Clearance and Redevelopment) Act, 1971 and hence the suit is not maintainable for want of permission of the competent authority. He submitted that both the courts have failed to take note of this. He further submitted that so far as bonafide requirement is concerned, there are no pleadings to that effect and hence the courts below could not have considered the landlord's contention that he requires the suit premises for his bonafide and personal requirement.

3. I am not impressed by the submissions of the learned counsel. On bonafide requirement there is a concurrent finding of fact, which in my opinion, cannot be called perverse. In the plaint the plaintiff has averred that the plaintiff bonafide requires the suit premises for himself and his family. He has led evidence to establlish the bonafide requirement. He is residing in a room admeasuring 12' x 25'. His family has five members. He has two sons and one daughter. The children have become major. The plaintiff's requirement, therefore, cannot be brushed aside. On comparative hardship also both the courts have rightly held in favour of the plaintiff.

4. So far as the contention that the suit premises are situated in slum area is concerned, the courts below have rightly held that the defendant has not been able to prove this fact. It is not possible at this stage to disturb the said finding because it is unassailable. In view of this, the petition

deserves to be dismissed and is dismissed as such.

5. At this stage the learned counsel for the petitioner states that the petitioner wants to approach the Supreme Court, therefore, some time may be granted. The learned counsel for the respondent opposes. In the circumstances of the case, execution of the impugned decree is stayed for six weeks.

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